

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

IN RE THE MARRIAGE OF ANTHONY SIDERIS,)	No. 63862-9-1
)	
Petitioner,)	
)	UNPUBLISHED OPINION
v.)	
)	
ERIN SIDERIS,)	
)	
Respondent.)	FILED: <u>October 26, 2009</u>
_____)	

Schindler, C.J. — Erin Sideris appeals the trial court’s order modifying maintenance.¹ Erin contends that the court erred in ruling there was a substantial change in circumstances based on (1) the current income of her former spouse, and (2) her cohabitation with another man that reduced her need for maintenance. Because the court did not abuse its discretion in finding a substantial change of circumstances that justified modification of maintenance, we affirm.

FACTS

Anthony (Tony) Sideris and Erin Sideris married in 1987 and have two children. From 1989 until 2005, Tony was employed as a criminal investigator with the Naval Criminal Investigative Service (NCIS), earning an annual salary of \$80,000 to \$85,000, or approximately \$5,000 per month after taxes. After the children were born, Erin did not work outside the home. In 2003, Tony was

¹ For purposes of clarity, we refer to Erin Sideris and Tony Sideris by their first names and mean no disrespect by doing so.

stationed in Italy with his family. In September of that year, Erin and Tony separated. Erin and the two children returned to Silverdale, Washington.

In 2004, Tony learned that he was being transferred to Washington D.C., instead of the Puget Sound area. Tony began making inquiries about working for other federal agencies in the Puget Sound area. In late 2004, Tony returned to the United States on administrative leave from NCIS.

Representing themselves pro se, on January 12, 2005, Erin and Tony filed an agreed final decree of dissolution, parenting plan and child support order. The decree awarded Erin the majority of the community property and spousal maintenance. Erin received the family home and a lot the parties owned in Silverdale, Washington, a Maui timeshare, a 2002 vehicle, and 50 per cent of a savings account worth \$170,000. Tony received a 1994 vehicle, a motorcycle, and 50 per cent of the savings account. Tony agreed to pay Erin \$1,500 per month in child support. Tony also agreed to pay Erin \$2,000 per month in maintenance for ten years or until she remarried.

Approximately two weeks later, on January 26, 2005, Erin and Brian Slagle formed Slagle Construction Company. Erin and Slagle are business partners and co-owners of Slagle Construction and Erin holds the position of vice-president. In early 2005, Erin sold the family home and the lot in Silverdale. Erin used the proceeds from the sale to make a loan to Slagle Construction.

Erin testified that she is involved in most aspects of Slagle Construction and works approximately 50 to 60 hours per week. The tax returns for Slagle Construction show gross receipts of \$110,000 in 2005 and \$390,000 in 2006.

In fall 2005, Erin and the children moved in with Slagle. While Erin did not pay any money for her share of the house, she is a co-owner and pays three-quarters of the monthly mortgage payment of \$1,652. Tony married a foreign national and moved to Port Orchard in 2005. Tony's marriage resulted in the loss of his security clearance and his NCIS job. Tony tried to find another comparable job and applied to work for the Immigration and Customs Enforcement Agency in Seattle, but was not hired.

From April 2005 until May 2008, Tony worked on contract for Blackwater Security as a security specialist in Baghdad, Iraq. Tony was paid \$500 per day plus benefits when he worked on contract for Blackwater.

On September 21, 2007, Tony filed a petition to modify the maintenance provision in the 2005 decree. Tony stated that he could only meet his child support and spousal maintenance obligations by continuing to work for Blackwater Security. Tony said that he was unwilling to continue working on contract for Blackwater because of the danger and the amount of time he had to spend in Iraq. Tony also said that Erin's circumstances had changed such that she had a reduced need for maintenance.

By the summer of 2008, Slagle Construction had built and sold four homes, was in the process of building another home on lakefront property, and had acquired other parcels for future construction. By 2008, Slagle Construction had also repaid a significant portion of the loan from Erin with interest.

Shortly before trial in July 2008, Tony injured his shoulder.² Tony decided

² Based on his injury, Tony became eligible for federal disability insurance. There is no evidence regarding the duration of the disability payments of \$4,000 per month.

to pursue a career in real estate. Tony got a job as a real estate agent in the Gig Harbor area working on commission.

Tony and Erin were the only witnesses at trial. At the conclusion of the trial, the court found there was a substantial change of circumstances not contemplated at the time of the decree. The court ruled that Tony did not have the financial ability to pay \$2,000 a month in maintenance and Erin's circumstances reduced her need for maintenance.³ The findings and conclusions state in pertinent part:

[X] The spousal maintenance should be modified because:

[X] There has been the following substantial change of circumstances since the spousal maintenance award:

- Petitioner is no longer able to earn as much as he had voluntarily obligated himself to pay.
- Respondent's living arrangement has reduced her need for maintenance.

In its oral decision, the court also addressed Tony's decision to not renew a contact with Blackwater Security.

Petitioner is not employed as he was. And there is no obligation on his part to continue employment under the dangerous circumstances he found himself in the last couple of years working with Blackwater in Iraq.

The court entered an order reducing the monthly maintenance obligation to \$500 per month. Erin appeals.

ANALYSIS

³ The court stated it did not consider Tony's shoulder injury as a basis for the modification, and the evidence in the record establishes that Tony decided not to renew his Blackwater contract before he sustained the injury.

The court may modify the maintenance provision of a decree if the moving party demonstrates a “substantial change of circumstances” that the parties did not contemplate at the time of the dissolution decree. RCW 26.09.170(1); See also In re Marriage of Spreen, 107 Wn. App. 341, 346, 28 P.3d 769 (2001).

“The phrase ‘change in circumstances’ refers to the financial ability of the obligor spouse to pay vis-à-vis the necessities of the other spouse.” Spreen, 107 Wn. App. at 346 (quoting In re Marriage of Ochsner, 47 Wn. App. 520, 524, 736 P.2d 292 (1987)).

This court will not reverse the trial court's determination of whether a change in circumstances warrants modifying maintenance absent an abuse of discretion. In re Marriage of Jennings, 138 Wn.2d 612, 625-26, 980 P.2d 1248 (1999); Spreen, 107 Wn. App. at 346. “In determining whether the trial court abused its discretion in ordering modification, this court reviews the order ‘for substantial supporting evidence and for legal error.’” In re Marriage of Drlik, 121 Wn. App. 269, 274, 87 P.3d 1192 (2004) (quoting Spreen, 107 Wn. App. at 346). “Substantial evidence supports a factual determination if the record contains sufficient evidence to persuade a fair-minded, rational person of the truth of that determination.” Spreen, 107 Wn. App. at 346 (quoting Bering v. SHARE, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)). In assessing the ability of the obligor to pay and the needs of the recipient spouse, the court looks to the same statutory

factors used to make the initial determination in awarding maintenance.⁴

Absent a substantial showing of good faith, a voluntary reduction in income will not constitute a change of circumstances warranting modification. Lambert v. Lambert, 66 Wn.2d 503, 510, 403 P.2d 664 (1965). Erin contends the trial court erred in finding that Tony's voluntary reduction justified finding a substantial change in circumstances. Erin also contends there is no express finding that Tony acted in good faith when he decided to take a position as a real estate agent. Erin points out that Tony's earnings actually increased when Tony worked as a contract employee in Iraq after they were divorced. Erin argues that because Tony was able to earn the income necessary to meet his maintenance obligations, he cannot show that his voluntary reduction of income was in good faith. Erin also asserts that Tony did not diligently pursue comparable federal or other employment as an investigator.

The record supports the trial court's determination that Tony's voluntary reduction in income was justified. The court accepted Tony's decision to not

⁴ RCW 26.09.090(1) sets forth the following factors for the court to consider in awarding maintenance:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage or domestic partnership;
- (d) The duration of the marriage or domestic partnership;
- (e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and
- (f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

renew his contract with Blackwater as a legitimate decision that was made in good faith. While there is no explicit finding, the record supports the trial court's implicit finding that Tony acted in good faith in deciding to pursue a position as a real estate agent in the Puget Sound area. Moreover, no evidence in the record suggests an underlying motive to avoid maintenance obligations. Compare Fox v. Fox, 87 Wn. App. 782, 786, 942 P.2d 1084 (1997) (income reduction undertaken as part of a plan to give the appearance of worsened financial condition was not a reduction taken in good faith). The testimony also shows that Tony made efforts to find comparable work with the federal government, and Erin points to no specific opportunities that Tony failed to pursue.

Erin also argues that the court erred in considering her cohabitation and relationship with Slagle in concluding there was a substantial change in circumstances. In In re Marriage of Tower, 55 Wn. App. 697, 703, 780 P.2d 863 (1989), this court held that a cohabitation relationship may only be considered in determining whether the financial needs of a recipient spouse have been reduced. Whether modification is warranted depends on an evaluation of the relationship and whether it substantially alters the recipient's economic circumstances. Tower, 55 Wn. App. at 702-3.

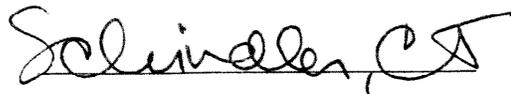
The test for whether cohabitation warrants termination or modification of maintenance must be more than simply whether two people enter into what they hope will be a long-term relationship. Instead, it must be whether the new relationship substantially changes the maintenance recipient's economic circumstances. We, therefore, hold that in a case where long-term maintenance has been appropriately awarded, cohabitation should not automatically trigger termination. Cohabitation can, however, permit a factual determination whether a substantial change in circumstances has occurred which entitles the paying spouse to ask for a reduction or

elimination of maintenance.
Tower, 55 Wn. App. at 703.

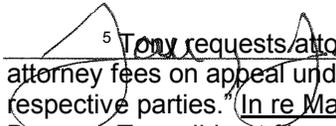
Erin contends that the court should not have considered her relationship or cohabitation with Slagle as a basis for ordering modification because she does not rely on Slagle to pay her monthly expenses and they do not comingle assets. Erin also points to her testimony that although Slagle and his wife have been separated for more than twenty years, they are still married.

The record supports the court's finding that the relationship substantially changes Erin's economic circumstances and reduces her need for maintenance. Erin and Slagle have been involved in a stable relationship for more than three years. Erin is the partner and co-owner of their successful construction business. She also co-owns the house that she and Slagle live in with her two children.

In sum, substantial evidence supports the trial court's determination that there was a substantial change in circumstances based on Tony's inability to continue to pay \$2,000 per month in maintenance, and Erin's economic circumstances and need for maintenance. We affirm the order modifying maintenance.⁵



WE CONCUR:



⁵ Tony requests attorney fees on appeal under RCW 26.09.140. In order to award attorney fees on appeal under RCW 26.09.140, we examine "the financial resources of the respective parties." (In re Marriage of Griffin, 114 Wn.2d 772, 779, 791 P.2d 519 (1990)). Because Tony did not file an affidavit of financial need/inability to pay as required under RAP 18.1(c), we deny the request.

